UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/1994/398
5 April 1994

ORIGINAL: ENGLISH

LETTER DATED 5 APRIL 1994 FROM THE CHARGE D'AFFAIRES A.I. OF THE PERMANENT MISSION OF YUGOSLAVIA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

Upon instructions of my Government, I have the honour to write to you in connection with the letter dated 16 February 1994 from the Permanent Representative of Croatia to the United Nations addressed to you (S/1994/198).

By invoking the Security Council resolutions and General Assembly resolution 47/1, the representative of Croatia seeks to present the legal status of the Federal Republic of Yugoslavia in a highly arbitrary and tendentious way. In doing so, he fails to recognize that it was precisely at the request of Croatia and Bosnia and Herzegovina that the Legal Counsel of the United Nations stated on 30 September 1992 that:

> "... the only practical consequence that the resolution draws is that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the General Assembly. It is clear therefore, that representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) can no longer participate in the work of the General Assembly, its subsidiary organs, nor conferences and meetings convened by it.
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> "On the other hand, the resolution neither terminates nor suspends Yugoslavia's membership in the Organization." 1/

As to the continuity of Yugoslavia as a party to international treaties, the United Nations Office of Legal Affairs, in its letter dated 16 November 1993, stated that:

> "... the status of Yugoslavia as a party to treaties was not affected by the adoption of General Assembly resolution 47/1 of 22 September 1992. By that resolution, the General Assembly decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the General Assembly. It did not address Yugoslavia's status as a party to treaties."

It is therefore surprising that, by interpreting General Assembly and Security Council resolutions in an arbitrary way, the representative of Croatia should oppose the positions taken by authoritative United Nations organs. It is

even more surprising that he should find it appropriate to react, after two years, to the letters of the Chargé d'affaires a.i. of the Permanent Mission of the Federal Republic of Yugoslavia of 27 April 1992, addressed to the Secretary-General of the United Nations and to the President of the Security Council. 2/ It should be recalled that these letters express, among other things, Yugoslavia's readiness to continue to honour its international commitments. Such an attitude is clearly expressed in the declaration on the continuity of the international legal personality of the Federal Republic of Yugoslavia, adopted on 27 April 1992 on the occasion of the proclamation of the Constitution of the Federal Republic of Yugoslavia. The declaration, as well as the Constitution of the Federal Republic of Yugoslavia, reflect the actual and legal situation in which the Yugoslav Federation found itself following the territorial diminution caused by the secession of its parts.

Since it is posited on subjectivism and arbitrariness, the letter of the representative of Croatia overlooks some basic facts and legal categories. In that letter, it was repeatedly stated that the Federal Republic of Yugoslavia aspires to be the "sole legitimate successor to the former Socialist Federal Republic of Yugoslavia". It hardly merits serious mention that, as the predecessor State, the parts of which have seceded and became new States, the Federal Republic of Yugoslavia has never claimed to be nor could it point out, in the light of the relevant rules of international law, that it is a successor State (either the sole successor State or one of the successor States).

Croatia, no doubt, is a successor State and the Federal Republic of Yugoslavia does not deny that. The term "successor State", however, implies exclusively the change of sovereignty in a part of the territory of the Yugoslav Federation in the sense of the transformation of that part of the territory into an independent State. The very act of the change of territorial sovereignty is not automatically linked to the transfer of the rights and obligations of the Federation to the seceded part, since such a transfer implies legality of the territorial change, i.e. that the territorial change has been carried out in conformity with the principles of positive international law. The recognition of Croatia as an independent State by third States and its admission into international organizations is only the recognition of the actual state of affairs in a concrete case, i.e., the constitution of a new sovereignty on a part of the territory of the Federation, but it cannot convalidate the illegality of the act of secession and its consequences.

Against this backdrop, the Federal Republic of Yugoslavia, as the predecessor State, is not legally bound to engage in a debate on the consequences of secession and to seek their negotiated regulation. Guided by a desire to normalize relations with the seceded parts of the Yugoslav Federation and to protect the interests of third parties, statal and non-statal, the Federal Republic of Yugoslavia has entered the debate on succession. In its opinion, the debate should be aimed at achieving a negotiated regulation of all consequences of secession on the basis of the relevant legal rules on the transfer of part of rights and obligations and the rules on the responsibility for unlawful acts.

In his letter, the representative of Croatia invokes the so-called Badinter Commission's opinions in an attempt to find support for his positions. However,

the fact is that the Badinter Commission is no arbitration at all; it is an advisory body of the Conference on Yugoslavia, which in practice acted as an advisory organ of the Chairman of the Conference and of the President of the Council of the European Community. The Commission's opinions were to serve as an element in the work of the Conference on Yugoslavia which was to take decisions on the basis of the agreement of the participants. In this sense, inter alia, it was said in the opinions that "the results of the Commission's deliberations will be put back to the Conference through the Chairman". (Conference on Yugoslavia, Arbitration Commission, interlocutory decision, opinions Nos. 8, 9 and 10).

In response to the attempts to have the original mandate of the Commission expanded, the Federal Republic of Yugoslavia disassociated itself in clear and unambiguous terms from the work of the Commission. In their joint letter of 8 June 1992, the Presidents of Serbia and Montenegro denied the Commission's competence to provide answers to the questions which were put forward to the Commission on 18 May 1992 by the Chairman of the Conference, contrary to the agreed procedure. In the official statement of 4 July 1992, the Government of the Federal Republic of Yugoslavia, inter alia, pointed out that the opinions of the Commission constitute no legal basis for whatever meritorious decision and that it considered them a doctrinaire opinion in the sense of Article 38 (d) of the Statute of the International Court of Justice. Finally, in the official statement of 30 April 1993, the Government of the Federal Republic of Yugoslavia stated that the Federal Republic of Yugoslavia shall consider null and void and non-binding each and every opinion of the Commission adopted in the procedure to which it has not agreed.

An eloquent proof of the "validity and significance" of the opinions of this Commission is the fact that it was ignored by the European Community itself. It is known that the Badinter Commission was of the opinion that, of all seceded Yugoslav republics, only Slovenia and Macedonia, met the conditions for recognition. However, soon after the adoption of this opinion, the European Community recognized Croatia which, even in the opinion of the Commission, did not fulfil the basic criteria for recognition. The invocation of the positions of the Badinter Commission, therefore, could not be taken as a legally and politically relevant argument and fact.

It transpires from the above-mentioned that the positions contained in the letter of the representative of Croatia have no legal basis and are motivated solely by political reasons. The Yugoslav Government deplores that such a response by the representative of Croatia should come at a time when bilateral negotiations between the Federal Republic of Yugoslavia and the Republic of Croatia have been intensified.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(Signed) Dragomir DJOKIC
Ambassador
Chargé d'affaires a.i.

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Notes

1/ A/47/485.

2/ A/46/915 and S/23877.